

HB 742 - Representative Raser
Senate Judiciary Committee Hearing
March 23, 2007

Montana Code Annotated 2005

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46-16-220. Child hearsay exception -- criminal proceedings. (1) Otherwise inadmissible hearsay may be admissible in evidence in a criminal proceeding, as provided in subsection (2), if:

- (a) the declarant of the out-of-court statement is a child who is:
 - (i) an alleged victim of a sexual offense or other crime of violence, including partner or family member assault, that is the subject of the criminal proceeding; or
 - (ii) a witness to an alleged sexual offense or other crime of violence, including partner or family member assault, that is the subject of the criminal proceeding;
- (b) the court finds that the time, content, and circumstances of the statement provide circumstantial guarantees of trustworthiness;
- (c) the child is unavailable as a witness;
- (d) the child hearsay testimony is offered as evidence of a material fact and is more probative on the point for which it is offered than any other evidence available through reasonable efforts; and
- (e) the party intending to offer the child hearsay testimony gives sufficient notice to provide the adverse party with a fair opportunity to prepare. The notice must include the content of the statement, the approximate time, date, and location of the statement, the person to whom the statement was made, and the circumstances surrounding the statement that the offering party believes support the statement's reliability.

(2) The court shall issue findings of fact and conclusions of law setting forth the court's reasoning on the admissibility of the child's testimony.

(3) When deciding the admissibility of offered child hearsay testimony under subsections (1) and (2), a court shall consider the following:

- (a) the attributes of the child hearsay declarant, including:
 - (i) the child's age;
 - (ii) the child's ability to communicate verbally;
 - (iii) the child's ability to comprehend the statements or questions of others;
 - (iv) the child's ability to tell the difference between truth and falsehood;
 - (v) the child's motivation to tell the truth, including whether the child understands the general obligation to speak truthfully and not fabricate stories;
 - (vi) whether the child possessed sufficient mental capacity at the time of the alleged incident to create an accurate memory of the incident; and
 - (vii) whether the child possesses sufficient memory to retain an independent recollection of the events at issue;
- (b) information regarding the witness who is relating the child's hearsay statement, including:
 - (i) the witness's relationship to the child;

- (ii) whether the relationship between the witness and the child has an impact on the trustworthiness of the child's hearsay statement;
- (iii) whether the witness has a motive to fabricate or distort the child's statement; and
- (iv) the circumstances under which the witness heard the child's statement, including the timing of the statement in relation to the incident at issue and the availability of another person in whom the child could confide;
- (c) information regarding the child's statement, including:
 - (i) whether the statement contains knowledge not normally attributed to a child of the declarant's age;
 - (ii) whether the statement was spontaneous;
 - (iii) the suggestiveness of statements by other persons to the child at the time that the child made the statement;
 - (iv) if statements were made by the child to more than one person, whether those statements were consistent; and
 - (v) the nearness in time of the statement to the incident at issue;
- (d) the availability of corroborative evidence through physical evidence or circumstantial evidence of motive or opportunity, including:
 - (i) whether the alleged act can be corroborated; and
 - (ii) if the child's statement identifies a perpetrator, whether that identity can be corroborated;and
- (e) other considerations that in the judge's opinion may bear on the admissibility of the child hearsay testimony.

(4) As used in this section, "child" means a person under 15 years of age.

History: En. Sec. 1, Ch. 456, L. 2003.